BEFORE THE

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

DOCKET NO. 2019-390-E

IN RE: Ganymede Solar, LLC, Petitioner, Dominion Energy South Carolina, Inc., Respondent.	)	**DOMINION ENERGY SOUTH CAROLINA, INC.'S RESPONSE IN OPPOSITION TO MOTION FOR PROTECTIVE ORDER**

Pursuant to S.C. Code Ann. Regs. § 103-829(A), the South Carolina Rules of Civil Procedure ("SCRCP"), and other applicable rules of practice and procedure of the Public Service Commission of South Carolina ("Commission"), Dominion Energy South Carolina, Inc. ("DESC") responds in opposition to Ganymede Solar, LLC's ("Ganymede") Motion for Protective Order, filed on February 4, 2020, in the above-referenced docket (the "Motion"). The Motion was filed to improperly shield Ganymede from its obligation to substantively respond to DESC's First Set of Discovery Requests ("Discovery Requests"), which are attached hereto as Exhibit A and incorporated herein. As discussed below, the Motion is improper because:

- As a party of record, it is well-settled that DESC is entitled to conduct discovery under the Commission's rules and regulations, the SCRCP, and South Carolina law;
- Discovery is necessary for DESC and the Commission to fully examine the facts underlying Ganymede's claims;
- Ganymede failed to provide the Commission with a basis for relief in the Motion.
- A complete bar on discovery improperly prohibits DESC from fully developing appropriate and responsive defenses and claims before the pre-filed Testimony deadlines set forth by Order of the Commission on February 5, 2020; and

- Ganymede's request is for the sole and wrongful purpose of unnecessarily delaying this proceeding and stonewalling DESC and the Commission from obtaining information relevant to the claims set forth by Ganymede.

RELEVANT BACKGROUND

On December 20, 2019, Ganymede initiated the instant dispute by filing a Motion to Maintain Status Quo and a Petition in the above-referenced docket—each of which named DESC as the Respondent.[1] Ganymede filed an amended Petition (the "Petition") on January 24, 2020. The Petition made a number of unsupported claims to avoid making a milestone payment in accordance with Ganymede's interconnection agreement (the "Ganymede IA"). In response to Ganymede's filings, DESC filed (i) a Response in Opposition to Motion to Maintain Status Quo on December 30, 2019, (ii) an Answer on January 21, 2020, and (iii) an Answer to Amended Petition on January 24, 2020. Since Ganymede's initial filings, Ganymede failed to make its second milestone payment ("Milestone Payment 2") under the Ganymede IA. As a result, DESC terminated the Ganymede IA pursuant to its terms and removed Ganymede from the interconnection queue.

In order to understand the basis of Ganymede's claims and prepare for the DESC testimony required by the Commission in this docket, DESC properly filed the Discovery Requests. Pursuant to applicable Commission rules and regulations, the responses to the Interrogatories and Requests for Production of Documents contained in the Discovery Requests were due on February 6, 2020, and the deadline for responses to the Requests for Admission in the Discovery Requests is February 17, 2020. *See* S.C. Code Ann. Regs. § 103-833, S.C. Code Ann. Regs. § 103-835, and Rule 36, SCRCP. Instead of substantively responding, Ganymede

[1] Indeed, the Commission has ruled that where a Petitioner seeks relief under an interconnection agreement pursuant to a Motion to Maintain Status Quo, DESC should be "a party to the docket without having to intervene in it." *Request of Beulah Solar, LLC for Modification of Interconnection Agreement with South Carolina Electric & Gas Company*, 2019 WL 202765, at *1 (S.C.P.S.C. 2019).

filed its *Objections/Responses to Company's First Set of Discovery Requests* on February 4, 2020 (the "Objections"). The Objections contain 19 numbered paragraphs, that, in some form or another, disclaim Ganymede's well-settled obligations to substantively respond to the Discovery Requests. In conjunction, the Objections and the Motion inexplicably argue that the Discovery Requests are "moot," "inappropriate," and "serve no legitimate discovery purpose." Objections at 1; Motion at 2. As a result, Ganymede did not sufficiently respond to any of the Discovery Requests and improperly requested the Commission toll "any requirement that Ganymede respond to [the] Discovery Requests." Motion at 3.

As set forth below, the Discovery Requests are proper and seek material relevant to this proceeding. The well-settled discovery rules applicable to this proceeding should be followed in order for DESC to secure evidence—if any exists—of the claims alleged by Ganymede.

STANDARD OF REVIEW

Rule 26(c) of the SCRCP allows a party from whom discovery is sought to seek protection "for good cause shown" from "annoyance, embarrassment, oppression, or undue burden by expense." Rule 26(c), SCRCP. To show good cause, Ganymede must demonstrate to the Commission that the discovery process in this docket "threatens to become abusive or create a particularized harm." *Hollman v. Woolfson*, 683 S.E.2d 495, 498 (S.C. 2009); *see also Hamm v. South Carolina*, 439 S.E.2d 852 (S.C. 1994); *Gattison v. S.C. State College*, 456 S.E.2d 414 (S.C. Ct. App. 1995).

ARGUMENT

I. As a party of record, DESC is entitled to discovery.

As a party of record, DESC is entitled to serve the Discovery Requests in accordance with S.C. Code Ann. Regs. § 103-833, S.C. Code Ann. Regs. § 103-835, and Rule 36 of the SCRCP, which permit DESC to seek "[a]ny material relevant to the subject matter involved in

the pending proceeding." S.C. Code Ann. Regs. § 103-833(A).[2] Indeed, the Commission has held that where it conducts a *de novo* hearing, "its discovery rules are clearly applicable." *Application of Daufuskie Island Utility Company*, 2017 WL 4864953, at *1 (S.C.P.S.C. 2017).

In violation of these clear rules and regulations, Ganymede simply maintains that DESC is not entitled to discovery because (i) Ganymede does not seek relief from DESC and (ii) DESC "maintains that it can play no material part in this dispute." *See* Motion at 2. Surely, Ganymede would acknowledge that every party seeking relief in front of the Commission seeks such relief from only one entity—the Commission. To hold otherwise would mean that discovery would be improper in every docket. Additionally, DESC has never maintained that it cannot play a material part in this proceeding. It would be nonsensical for DESC to maintain such a position, while at the same time submitting substantive filings in this docket, including an Answer, a Response in Opposition to Motion to Maintain Status Quo, and the Discovery Requests. Regardless, neither of these arguments changes the fact that DESC is a party of record in this docket and has an interest in the outcome.[3] As such, DESC is entitled to avail itself of the discovery rules of this Commission and the SCRCP applicable to parties of record.

II. The Discovery Requests are appropriate and serve a legitimate purpose.

The Discovery Requests are appropriate and serve a legitimate purpose because they seek material relevant to the subject matter in this proceeding in order for DESC to conduct a full examination of the facts underlying Ganymede's claims. *See* S.C. Code Ann. Regs. § 103-833(A); *see also Kramer v. Kramer*, 473 S.E.2d 846 (S.C. Ct. App. 1996). The relevant South

[2] *See also* Rule 26(b) of the SCRCP ("[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action"); *Kramer v. Kramer*, 473 S.E.2d 846, 848 (S.C. Ct. App. 1996), 217 (S.C. Ct. App. 1996) ("the rules of discovery were designed to promote the full examination of all relevant facts and issues and to discourage litigants from surprising one another through the introduction of unexpected testimony").

[3] Even Ganymede acknowledged that DESC has an interest in this proceeding. *See* Petition at 5.

Carolina rules, regulations, and case law clearly demonstrate that the scope of discovery is broad and a party:

> [M]ay obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action . . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.
>
> Rule 26(b)(1), SCRCP.

As discussed above, Ganymede failed to make Milestone Payment 2 under the Ganymede IA, which resulted in termination of the same. Ganymede cites certain variable integration charge language (the "VIC Language") in DESC's standard power purchase agreement[4] as the reason that its project was allegedly unable to obtain financing. *See* Petition at 3-4.

As such, the Discovery Requests seek, among other things, information related to (i) the Ganymede IA, (ii) Ganymede's alleged efforts to obtain financing, and (iii) how the VIC Language has purportedly adversely affected Ganymede. In addition, DESC is entitled to explore facts related to these issues, including (i) Ganymede's parent company's—Cypress Creek Renewables, LLC ("Cypress Creek")—involvement in solar projects with power purchase agreements containing identical VIC Language, (ii) Cypress Creek's ability to secure funding for other projects containing the VIC Language, (iii) Ganymede's and Cypress Creek's communications with investors as to the project, and (iv) what plan, if any, Ganymede and Cypress Creek have that would render this "now unfinanceable" project sufficiently attractive to investors if the Commission sided with Ganymede and revived, and then modified, the Ganymede IA. Ganymede's Motion to Maintain Status Quo at 1.

Clearly, DESC requests information related to claims Ganymede has made in its own filings and "material relevant to the subject matter involved in the pending proceeding." S.C.

[4] To date, Ganymede has not executed a power purchase agreement with DESC.

Code Ann. Regs. § 103-833(A). These questions are reasonably calculated to lead to the discovery of admissible evidence and are critical to DESC's ability to defend itself and otherwise investigate Ganymede's claims. Clearly, the Discovery Requests are within the permissive scope of discovery. Presumably, Ganymede would welcome the opportunity to develop the record in front of the Commission as to precisely how the VIC Language has prejudiced its project to this extent. It is unclear why Ganymede would seek to hide relevant information from DESC and the Commission, yet, Ganymede continues to vehemently refuse to provide any discovery on these exact topics.

III. The Discovery Requests are not embarrassing, oppressive, or unduly burdensome.

Ganymede has not met its burden of proving that responding to the Discovery Requests would be embarrassing, oppressive, or unduly burdensome, nor can they. As justification for its claim that each and every one of the items contained in the Discovery Requests is "inappropriate" and would cause an "undue burden," Ganymede simply contends that the Discovery Requests "will cause an undue burden by expense on their face, because DESC knew when it served the Discovery Requests . . . that [the Discovery Requests] would serve no legitimate purpose." Motion at 2. Not only does Ganymede imply that DESC filed the Discovery Requests in bad faith—which is a bold claim considering the extensive rules, regulations, and case law in South Carolina that indicate otherwise—Ganymede also provided the Commission with zero substantive evidence proving that any specific item would impose an undue expense upon Ganymede. For example, DESC would welcome any specific explanation from Ganymede as to why listing the names of witnesses it intends to utilize and admitting that it read the Ganymede IA prior to signing—items contained in the Discovery Requests—would constitute an "undue burden by expense and time." Motion at 3. Indeed, simply refusing to respond because such response may undercut claims made in the Petition is not a valid ground for such refusal.

However, keeping with its pattern of conduct in this docket, Ganymede lobs yet another filing at the Commission without providing adequate justification for why the Commission should grant any relief to Ganymede.

CONCLUSION

Ganymede's tactics of submitting multiple filings in this docket that repeatedly contradict the well-settled principles embedded throughout the rules, regulations, and precedent applicable to this proceeding have already forced DESC to request an extension of the deadlines in this docket because DESC does not have adequate information from which to prepare appropriate and responsive testimony. *See Letter to Hearing Officer*, filed on February 5, 2020, in the above-referenced docket. Granting the Motion will only further delay this Commission from deciding the merits of Ganymede's claims—a result that is in no one's best interest. As a result, Ganymede has failed to provide this Commission with the "good cause" required to bar all discovery in this matter—and has clearly failed to provide the Commission with evidence of the potential for abuse or particularized harm. *See Hollman v. Woolfson*, 683 S.E.2d 495 (S.C. 2009); *Hamm v. South Carolina*, 439 S.E.2d 852 (S.C. 1994); *Gattison v. S.C. State College*, 456 S.E.2d 414 (S.C. Ct. App. 1995). For the reasons stated above, DESC respectfully requests that the Motion be denied.

Respectfully Submitted,

/s/ J. Ashley Cooper
K. Chad Burgess, Esquire
Matthew W. Gissendanner, Esquire
Dominion Energy South Carolina, Inc.
Mail Code C222
220 Operation Way
Cayce, South Carolina 29033-3701
Phone: (803) 217-8141

Fax: (803) 217-7810
Email: chad.burgess@scana.com

J. Ashley Cooper, Esquire
Parker Poe Adams & Bernstein LLP
200 Meeting Street
Suite 301
Charleston, South Carolina 29401
Phone: (843) 727-2674
Fax: (843) 727-2680
Email: ashleycooper@parkerpoe.com

Attorneys for Dominion Energy South Carolina, Inc.

Cayce, South Carolina
February 14, 2020

BEFORE THE

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

DOCKET NO. 2019-390-E

IN RE: Ganymede Solar, LLC, Petitioner, Dominion Energy South Carolina, Inc., Respondent.	)	**CERTIFICATE OF SERVICE**

This is to certify that I, Ashley Cooper, have this day caused to be served upon the person named below ***Dominion Energy South Carolina, Inc.'s Response in Opposition to Motion for Protective Order*** by electronic mail and by placing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as follows:

Richard L. Whitt, Esquire
WHITT LAW FIRM, LLC
401 Western Lane, Suite E
Irmo, South Carolina 29063
Email: Richard@RLWhitt.Law

Counsel for Ganymede Solar, LLC.

Alexander W. Knowles, Esquire
Christopher Huber, Esquire
OFFICE OF REGULATORY STAFF
1401 Main Street, Suite 900
Columbia, South Carolina 29201
Email: aknowles@ors.sc.gov
Email: chuber@ors.sc.gov

/s/ J. Ashley Cooper

This 14th day of February, 2020

Exhibit A